

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**ALEXANDRIA FAYE**

**PLAINTIFF**

**VERSUS**

**CIVIL ACTION NO.: 1:17-cv-00145-LG-RHW**

**MISSISSIPPI DEPARTMENT OF  
HUMAN SERVICES, et al.**

**DEFENDANTS**

**MOTION TO DISMISS**

Defendants Mississippi Department of Human Services (“MDHS”), Harmony Raffeo, (“Raffeo”) sued individually and as an agent for MDHS, Tequila Hall, (“Hall”) sued individually and as an agent for MDHS, and Erica Weary, (“Weary”) sued individually and as an agent for MDHS (collectively “Defendants”) move the court under Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiff’s claims.

In her *third* attempt to assert the same claims against these Defendants, Plaintiff Alexandra Faye, individually and on behalf of her children, O.F. and K.S., in her First Amended Complaint [ Doc. 18] raises (1) claims under 42 U.S.C. § 1983 against Hall, Raffeo, Weary, individually and as agents of MDHS, (2) negligence claims under the Mississippi Tort Claims Act (“MTCA”) against MDHS, (3) negligence and gross negligence claims against Weary and (4) negligent infliction of emotional distress claims against Weary, Hall and Raffeo. As a matter of law, Faye’s First Amended Complaint fails to allege sufficient facts to support her claims and, therefore, should be dismissed. F.R.C.P. 12(b)(6). In addition, Faye’s claims are subject to qualified immunity, the exclusivity provisions of the MTCA as well as the exceptions to the waiver of immunity of the MTCA, respectively. For the reasons set out in the contemporaneously-filed Memorandum Supporting Motion to Dismiss, Defendants request the Court to enter a dismissal with prejudice of all claims and cause of actions against them. Defendants request any other relief the Court may deem proper.

This the 17<sup>th</sup> day of May, 2018.

MISSISSIPPI DEPARTMENT OF HUMAN SERVICES,  
HARMONY RAFFEO, INDIVIDUALLY, AND AS  
AGENT FOR THE MISSISSIPPI DEPARTMENT OF  
HUMAN SERVICES, TEQUILA HALL,  
INDIVIDUALLY, AND AS AGENT FOR MISSISSIPPI  
DEPARTMENT OF HUMAN SERVICES, ERICA  
WEARY, INDIVIDUALLY AND AS AGENT FOR THE  
MISSISSIPPI DEPARTMENT OF HUMAN SERVICES

BY: PAGE, MANNINO, PERESICH  
& McDERMOTT, P.L.L.C.

BY: s/ Stephen G. Peresich  
STEPHEN G. PERESICH, (MSB # 4114)  
JOHANNA M. MCMULLAN, (MSB # 9901)

PAGE, MANNINO, PERESICH,  
& McDERMOTT, P.L.L.C.  
Post Office Drawer 289  
Biloxi, MS 39533  
(228) 374-2100  
(228) 432-5539  
[stephen.peresich@pmp.org](mailto:stephen.peresich@pmp.org)  
[johanna.mcmullan@pmp.org](mailto:johanna.mcmullan@pmp.org)

**CERTIFICATE OF SERVICE**

I, Stephen G. Peresich, of the law firm of Page, Mannino, Peresich & McDermott, P.L.L.C., do hereby certify that I have this day electronically filed a true and correct copy of the foregoing pleading with the Clerk of the Court using the ECF system, which sent notification of such filing to the following ECF participants:

**Attorney for Plaintiffs**

Edward Gibson, Esq.  
HAWKINS/GIBSON, PLLC  
153 Main St  
Bay St. Louis, MS 39520  
[egibson@hgattorneys.com](mailto:egibson@hgattorneys.com)

This the 17<sup>th</sup> day of May, 2018.

*s/ Stephen G. Peresich*

STEPHEN G. PERESICH, MSB #4114

PAGE, MANNINO, PERESICH,  
& McDERMOTT, P.L.L.C.  
Post Office Drawer 289  
Biloxi, MS 39533  
(228) 374-2100  
(228) 432-5539  
[stephen.peresich@pmp.org](mailto:stephen.peresich@pmp.org)